

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-scc

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5 In the Matter of:

6 LEHMAN BROTHERS HOLDINGS INC.,

7 Debtor.

8 - - - - - x

9 ADV. PROC. NO.: 15-01112-scc

10 LEHMAN BROTHERS HOLDINGS INC., ET AL.,

11 Plaintiffs

12 v

13 U.S. BANK NATIONAL ASSOCIATION, ET AL.,

14 Defendants.

15 - - - - - x

16 U.S. Bankruptcy Court

17 One Bowling Green

18 New York, New York

19

20 July 1, 2015

21 9:03 AM

22

23 B E F O R E :

24 HON SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

1 Adversary proceeding: 15-01112-scc Lehman Brothers Holdings
2 Inc. et al v. U.S. Bank National Association et al
3 Doc #2 Motion of Lehman Brothers Holdings Inc. and
4 Structured Asset Securities Corporation for an Order to
5 Enforce the Modified Third Amended Joint Chapter 11 Plan of
6 Lehman Brothers Holdings Inc. and Its Affiliated Debtors and
7 Stay a Related Third-Party Action

8
9 Adversary proceeding: 15-01112-scc Lehman Brothers Holdings
10 Inc. et al v. U.S. Bank National Association et al
11 Doc #3 Lehman's Motion for Entry of an Order (A) Authorizing
12 the Filing of Certain Information Under Seal in Connection
13 with Lehman's Adversary Proceeding Against U.S. Bank N.A.,
14 Syncora Guarantee, Inc., and GreenPoint Mortgage Funding,
15 Inc., and Lehman's Motion for Stay of the GreenPoint
16 Litigation, and (B) Granting Related Relief

17
18 Doc #49703 Motion for Approval of Settlement Agreement
19 Relating to Airlie LCDO I (Aviv LCDO 2006-3) Credit Default
20 Swap Agreement and Indenture

21
22 Doc #49709 Motion of Lehman Brothers Holdings Inc. for
23 Extension of the Period to File Objections to and Requests
24 to Estimate Claims

25 Transcribed by: Sherri L. Breach

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P R O C E E D I N G S

THE COURT: All right. We're ready when you are.

MR. COSENZA: Your Honor --

THE COURT: Yes.

MR. COSENZA: -- Todd Cosenza from Willkie, Farr & Gallagher. I'm here with my partner, Paul Shalhoub and Tim McGinn --

THE COURT: Okay.

MR. COSENZA: -- and we represent the plan administrator, Lehman Brothers Holdings, Inc.

THE COURT: All right. Good morning.

MR. BURKE: Good morning, Your Honor. Kevin Burke from Cahill, Gordon & Reindel representing GreenPoint Mortgage funding. With me is Joel Levitin, also from Cahill Gordon, and James Murphy from the McGonigle Murphy firm -- Murphy McGonigle firm representing GreenPoint as well.

THE COURT: Okay. Good morning.

MR. VOGEL: Good morning, Your Honor. Michael Vogel from Allegaert Berger & Vogel. I'm representing Syncora Guarantee, and I'm here with my partner, John Craig, and my colleague, Lauren Pincus.

THE COURT: All right. Very good. Thank you.

MS. BOLAND: Good morning, Your Honor.

THE COURT: Good morning.

MS. BOLAND: Connie Boland of Nixon Peabody

1 representing U.S. Bank as Indenture Trustee. And I have my
2 colleague Annica Bianco with me.

3 THE COURT: Okay. Very nice.

4 Okay. Mr. Cosenza.

5 MR. COSENZA: Your Honor, may I approach?

6 THE COURT: Sure.

7 MR. COSENZA: Good morning, Your Honor. May it
8 please the Court.

9 Before getting to the details of the motion that's
10 pending before the Court --

11 THE COURT: I -- as you know and everybody should
12 know I've read everything. So don't --

13 MR. COSENZA: Sure.

14 THE COURT: -- feel obligated to go over what's in
15 the papers.

16 MR. COSENZA: I do want to give just an overall
17 sense of --

18 THE COURT: Sure.

19 MR. COSENZA: -- how the plan administrator is
20 viewing the claims that are pending against Lehman Brothers
21 and sort of give an assessment of where this all fits in so
22 you --

23 THE COURT: Sure.

24 MR. COSENZA: -- can bet a better understanding of
25 why we're here today.

1 So this case concerns three massive proof of
2 claims, two that have been brought by U.S. Bank; one that's
3 been brought by Syncora. The plan administrator views it
4 as, in essence, a single claim involving one transfer or
5 trust. U.S. Bank was the trustee for that trust and
6 Syncora, which at this point controls the trustee, acted as
7 the insurer for losses incurred by that trust.

8 We are bringing this action and seeking a
9 temporary stay of the New York action involving GreenPoint
10 and U.S. Bank because Lehman has little choice here, Your
11 Honor.

12 As a plan administrator there are massive claims
13 pending before the Bankruptcy Court that are going to be
14 directly impacted by what's -- what's happening in the New
15 York action, and we've become aware of sort of the
16 motivations and what's been going on in the New York action
17 really over the last year as to how it's going to impact the
18 estate.

19 And Lehman, as the plan administrator, believes
20 this is the best forum to adjudicate the dispute for all the
21 claims brought by all the parties. And that includes
22 GreenPoint, U.S. Bank, Syncora and the plan administrator.

23 U.S. Bank, as the holder of two of the massive
24 claims that were brought in the Bankruptcy Court, has
25 admitted in its New York State Court action against

1 GreenPoint that Lehman would not be liable if U.S. Bank
2 succeeds there against GreenPoint.

3 Lehman, nonetheless, nevertheless is stuck in the
4 middle of U.S. Bank and Syncora's dispute with GreenPoint,
5 and U.S. Bank, as they indicate in their objection, they
6 would like to have that remain that way indefinitely. They
7 are basically treating the claim that's pending in the New
8 York Court as insurance. And actually -- I'm sorry --

9 THE COURT: You don't agree with that, though?

10 MR. COSENZA: Sorry.

11 THE COURT: You don't agree with that?

12 MR. COSENZA: No. No, we don't.

13 THE COURT: I mean, and you make that clear, I --

14 MR. COSENZA: Yes.

15 THE COURT: -- think, in a footnote in your papers
16 --

17 MR. COSENZA: Correct.

18 THE COURT: -- right?

19 MR. COSENZA: And -- and, Your Honor, we, at this
20 point, as a plan administrator need to become unstuck and we
21 need to have the claims that have been brought here by U.S.
22 Bank and Syncora, we need to have those claims moved forward
23 as best we can as the plan administrator.

24 If, as U.S. Bank -- just to give you a rough
25 overview of how we view this. If U.S. Bank as it admits

1 elsewhere, if Lehman isn't liable and GreenPoint is, the
2 U.S. Bank claim should be disallowed because U.S. Bank will
3 be able to recover against GreenPoint.

4 If Lehman, as the plan administrator, is liable,
5 U.S. Bank's claim should go through the RMBS protocol that
6 was set up in December as one of the transferred trusts as
7 the Court has ordered other put-back litigation involving
8 U.S. Bank. And if that's the case, whatever the damages
9 that flow after those -- after the -- this trust is put
10 through the protocol Lehman will then pursue whatever
11 indemnification rights it has against GreenPoint.

12 And that would leave whatever is left as -- of the
13 Syncora claim. We believe the Syncora claim is largely
14 duplicative of the U.S. Bank claim. But to the extent there
15 are additional damages that are being sought by Syncora, we
16 would like for them to state exactly what they are and with
17 some specificity as to what they're seeking in addition to
18 the losses that were incurred by U.S. Bank as the trustee
19 for the trust.

20 At this point there is \$600 million reserved for
21 the Syncora claim and, I mean, as the plan administrator we
22 believe that that \$600 million reserve is very, very -- is
23 over -- we basically over-reserved for that amount. That's
24 sort of our view. And we believe that Syncora's damages are
25 much lower than that and they're here and they can tell us

1 -- tell you exactly what their losses are. But we believe
2 they are several hundred million dollars lower than the \$600
3 million reserve.

4 So we're asking this Court to stay the GreenPoint
5 litigation so that a couple of threshold issues can be
6 resolved here first so that the plan administrator can
7 understand exactly the extent that the claims that U.S. Bank
8 and Syncora have brought here and what the value of those
9 claims are.

10 And that's -- that's why we're here today, Your
11 Honor.

12 There are several bases in which we believe, and
13 we outlined these in our papers, that we believe the Court
14 can issue -- you know, can enjoin the State Court action.

15 THE COURT: So let -- before we get to that, so go
16 back to the -- to the statement you just made, issues that I
17 will resolve first if the State Court action were stayed.
18 What would those issues be?

19 MR. COSENZA: So those would be whether or not
20 there's certain definition as to what a -- I may get the
21 exact defined term wrong -- securitization transaction is,
22 and that would indicate whether or not U.S. -- basically
23 resolving that issue would determine whether not U.S. Bank's
24 claim against GreenPoint is valid; that GreenPoint has moved
25 for summary judgment saying that that -- that, you know,

1 whatever happened in terms of the assignments doesn't allow
2 U.S. Bank to pursue GreenPoint. There is basically a --

3 THE COURT: That -- that's what's people -- what
4 folks call the standing issue?

5 MR. COSENZA: Correct.

6 THE COURT: So -- okay. So then my next question
7 is even if the State Court were to decide that issue
8 tomorrow and decide it in a way that was not the way Lehman
9 wanted it decided.

10 MR. COSENZA: Uh-huh.

11 THE COURT: Lehman's not a party to that
12 litigation --

13 MR. COSENZA: Correct.

14 THE COURT: -- right? I could do whatever I want
15 when the issue came before me.

16 MR. COSENZA: That is correct, Your Honor.

17 THE COURT: Okay.

18 MR. COSENZA: We wouldn't be bound by that,
19 whatever determination. Obviously, I think we would hear
20 from GreenPoint.

21 THE COURT: I mean --

22 MR. COSENZA: Yeah.

23 THE COURT: -- just let me say out loud, I'll say
24 it 16 times because try as you might, things that get said
25 in courtrooms get taken out of context. So let nothing that

1 I say today reflect any negative thought, inference or
2 anything of the kind vis-à-vis what's happening in the State
3 Court.

4 MR. COSENZA: Okay. Correct.

5 THE COURT: So that's very important that
6 everybody understand that. I mean, the relief that you're
7 requesting is that I stay a State Court action. So
8 necessarily we're going to be talking about it, but I don't
9 want there to be any --

10 MR. COSENZA: But --

11 THE COURT: -- negative inference taken out --

12 MR. COSENZA: Sure.

13 THE COURT: -- out of context.

14 MR. COSENZA: Your Honor, and the issue we're
15 asking you -- we would ask to tee up before you would be a
16 limited issue, and assuming we were to prevail on that
17 issue, that would basically permit the disallowance of the
18 U.S. Bank claim because U.S. Bank would have whatever relief
19 they would have against GreenPoint. GreenPoint is a party
20 here and that issue would be resolved. And that would be a
21 -- obviously, a very helpful result for the plan
22 administrator in terms of trying to understand the magnitude
23 of these claims because then all we would have to deal with
24 at that point is the Syncora claim, which at this point is
25 somewhat of an amorphous claim that we're trying to wrap our

1 arms around. At that point we could try to get more
2 specificity as to what Syncora is seeking in addition to
3 what U.S. Bank was seeking.

4 We believe that Syncora's claims are basically the
5 same as the U.S. Bank claim, so we will argue that if the
6 U.S. Bank claim goes away and in essence U.S. Bank can only
7 pursue GreenPoint, the Syncora claim would be subsumed
8 within that. So we would -- and we would argue that before
9 you.

10 But obviously that would then eliminate three
11 massive claims for the estate just resolving one threshold
12 issue, and that's why we're here today.

13 THE COURT: And remind me what the history is with
14 respect to how these reserve amounts were either ordered or
15 agreed upon?

16 MR. COSENZA: Sure. Your Honor, I wasn't privy to
17 those, but my understanding is initially there was a reserve
18 that was set up for over a billion dollars for this when
19 this first was being discussed. And I think there -- there
20 was a motion made by Lehman, maybe it was a little over a
21 year ago, to subordinate the Syncora claim. I think as part
22 of that motion, which was, you know, teed up, I think there
23 was an agreement to table -- to table that action and to
24 lower the reserve to \$600 million.

25 I don't think we've ever been in a position, at

1 least in a judicial proceeding, to understand the value of
2 Syncora's claim.

3 THE COURT: Okay.

4 MR. COSENZA: So that's the background to that.

5 But, Your Honor, one other thing I would like to
6 sort of go through is -- and it's a big point in the papers
7 that were put forward before you -- that Lehman is a massive
8 estate. There are lots of issues that are sort of, you
9 know, that we deal -- that Lehman and Matt Cantor (ph), who
10 is the general chief legal officer of Lehman, deal with on a
11 daily basis.

12 It's only become clear to us within the last year
13 as to how Syncora and others are sort of viewing their claim
14 against the estate, sort of leaving in the background seeing
15 what happens in the GreenPoint litigation. And the
16 statements made in September of 2014 to the State Court
17 judge talking about how the claims against Lehman basically
18 would go away if U.S. Bank proceeds against -- wins against
19 GreenPoint. Those are statements only made in September of
20 2014. And those, for us, really highlighted sort of the
21 issue, you know, basically elevated it to us, figuring out
22 we need to take some sort of action.

23 In addition, the protocol was that basically
24 subsumes the other U.S. Bank proof of claim was only
25 approved in December. So there's a lot of comments made

1 about our delay, but really there have been a series of
2 events over the last six months that have led us to coming
3 before you today. And we have made a lot of efforts over
4 the last few months trying to mediate these -- this dispute
5 to avoid coming before you. And, unfortunately, those
6 efforts were unsuccessful.

7 So we're here today seeking a stay.

8 Your Honor, I know you've read the papers. I can
9 go through --

10 THE COURT: So -- so --

11 MR. COSENZA: -- so --

12 THE COURT: -- so then let's go to the question of
13 -- and I think this was raised by at least one of the
14 objecting parties, which is on the one hand you want to move
15 forward, you want a resolution and they say, what would
16 staying the State Court action accomplish. On its face that
17 seems contrary to your goal, your stated goal of moving
18 things along.

19 So if a stay were to be entered, how does that
20 help?

21 MR. COSENZA: Well, it helps in this regard, Your
22 Honor. We've quickly briefed the issues before you that we
23 think are important to the estate. We do believe, because
24 we're not a party to the New York State Court action, the
25 summary judgment motion has been pending for quite some

1 time. Regardless of the outcome of that motion, the New
2 York State Court system, as you know, allows for
3 interlocutory appeals. That process will take at least
4 another year if not much longer. So the estate is going to
5 be tied up waiting for a final determination in the New York
6 State Court proceedings for quite some time.

7 THE COURT: But that's the part that I don't
8 understand.

9 MR. COSENZA: Yes.

10 THE COURT: The part that I don't understand is --
11 and you confirmed that seven minutes ago; that I've got lots
12 of tools in my toolbox --

13 MR. COSENZA: Uh-huh.

14 THE COURT: -- that I can employ to lower the
15 reserve, make rulings on dispositive issues, compel parties
16 to engage in ADR protocols, et cetera. I just need someone
17 to ask me. I won't --

18 MR. COSENZA: We would ask --

19 THE COURT: I won't volunteer it.

20 MR. COSENZA: We would ask for all of those, Your
21 Honor.

22 (Laughter)

23 MR. COSENZA: Those are all very valuable tools
24 for the plan administrator.

25 THE COURT: Sure. But my -- my main -- when I

1 read the papers the implication was that somehow those tools
2 weren't available to me and I needed to stay the State Court
3 litigation so that I could open my toolbox. And I don't
4 think that that's necessarily the case.

5 MR. COSENZA: Well, Your Honor, there's also a
6 general concern by the plan administrator, which has
7 somewhat been alleviated by your comments, that a
8 determination in the State Court proceedings where we're not
9 a party will really be used as heavy evidence against us in
10 this action. And I think your comments that, you know --

11 THE COURT: Again, with -- with the utmost respect
12 --

13 MR. COSENZA: Yeah.

14 THE COURT: -- to the -- whoever is determine --
15 making that determination, whichever way it comes out, the
16 rules of collateral estoppel, res judicata, and all that
17 other good stuff, you're not a party. So you're not bound.
18 Frankly, you know, it is what it is.

19 I don't know if -- I'm not going to give you an
20 advance ruling on what weight it would be entitled to, but
21 it's -- it would just be something that occurred out there
22 and I don't know that it would have any effect at all. I'm
23 going to -- I would hear -- if there were a factual issue,
24 there would be a record. I would hear evidence that I would
25 hear and I can interpret the law myself.

1 MR. COSENZA: Sure.

2 THE COURT: And that's what I would do. So --

3 MR. COSENZA: Your Honor, I can caucus my client,
4 but in terms of the tools that you mentioned that are
5 available to you, I think all of those we would request be
6 put into play.

7 One, we would ask for, you know, some swift
8 determination on this assignment issue or as you described
9 it the standing issue. I think it's a pure legal issue that
10 can be decided looking at the underlying documents.

11 THE COURT: I mean, I --

12 MR. COSENZA: The --

13 THE COURT: -- I'm not well versed in the nitty
14 gritty of the legal point.

15 MR. COSENZA: Yes.

16 THE COURT: But we've been faced with so-called
17 assignment standing issues in other contexts and we've dealt
18 with them pretty quickly.

19 MR. COSENZA: Uh-huh.

20 THE COURT: So that's -- that's not a problem.

21 MR. COSENZA: So that would be number one.

22 Number two would be the issue of the Syncora
23 reserve, which we think at this point is -- you know, should
24 be lowered and we can find out from -- they're here, as to
25 what their actual losses are. And any other mechanism that

1 we use to get the parties sort of moving would also be
2 greatly appreciated by the plan administrator.

3 THE COURT: Okay. All right.

4 MR. COSENZA: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. BURKE: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. BURKE: Kevin Burke of Cahill, Gordon &
9 Reindel for GreenPoint Mortgage Funding.

10 Mr. Cosenza has just made out a great case for why
11 the adversary proceeding is appropriate, but he has not made
12 out any case for why a stay is appropriate.

13 THE COURT: Well, he was busy answering my
14 questions. So --

15 (Laughter)

16 MR. BURKE: True. But the papers don't make out
17 any case for a stay either.

18 What we have here is a case that is proceeding to
19 decision on summary judgment motions that have been argued,
20 briefed, argued and are now sub judice before the judge.
21 The determination will come when it comes, but as conceded
22 by the debtors, it's not a determination that will be
23 binding on the debtors or on Lehman in any way.

24 So letting that proceed may inform your -- Your
25 Honor on similar issues. It may provide some background of

1 what a New York State judge thinks of the law in that area,
2 but as you pointed out, you will be able to make your own
3 determination.

4 So what --

5 THE COURT: But isn't it the case that -- and Mr.
6 Cosenza I -- makes the point, which I -- which we all know.
7 I mean, there will be an appeal. One way or the other there
8 will be an appeal. There will be a --

9 MR. BURKE: So --

10 THE COURT: -- multiple appeals.

11 MR. BURKE: Sure.

12 THE COURT: It could take another couple of years.

13 MR. BURKE: Sure.

14 THE COURT: Won't you, in some way, seek to use
15 that -- won't the parties who are opposing the debtors'
16 motion seek to use all of that in some way to convince me
17 that, for example, I can't cut down the amount of the
18 reserve?

19 MR. BURKE: Your Honor, they may try to convince
20 you of that, but there's no binding effect. So staying all
21 of that, all that does is reduce the amount of information
22 that's available to Your Honor about what the legal issues
23 are. It doesn't enhance the debtors or Lehman's ability to
24 pursue the remedies that they've suggested: Reducing the
25 type of -- the amount of the reserve, getting a

1 determination standing issues, none of that is deterred and
2 all that can go ahead here as it should under the -- in the
3 adversary proceeding in the ordinary course following the
4 rules for the adversary proceeding; following rules for
5 estimation; following whatever rules that -- whatever the
6 toolbox is that is available to Your Honor for all of those
7 issues.

8 Stopping it, all that does is makes sure that
9 there isn't a ruling that might go their way. If it goes
10 their way, yes, there might be appeals, but at least there's
11 a determination. And, of course, they would argue as to our
12 client or as to -- or let's say U.S. Bank would then say,
13 okay, we won that -- that point. It's over.

14 GreenPoint is not a party to this bankruptcy.
15 We've not been here before. We've not -- don't have any
16 proof of claim. We are a true non-party to this process but
17 for the adversary. And so we think that there's no basis
18 for the Court to exercise its jurisdiction over the State
19 Court since there's so limited a connection between what's
20 going on in the State Court and what Your Honor could do
21 here.

22 If we look at what Lehman has asserted its
23 prejudices here, what the connection is. They say
24 inconsistent determination is a problem. Not for them.
25 It's not binding on them. Your Honor will be free to

1 determine whatever you wish to determine when you look at
2 the facts and the law. That was on -- it will probably be
3 page 2. And they conceded that it's not binding on them in
4 the reply brief in paragraph 12.

5 The second thing they say is that a stay would
6 defeat GreenPoint's efforts to keep this Court from deciding
7 the validity of Lehman Bank's assignment to Lehman Brothers
8 Holding and assessing its responsibility as mortgage
9 originator to indemnify Lehman in the event Lehman is liable
10 to one of the other defendants.

11 Well, that's at reply brief page 3. What efforts
12 are they talking about? We haven't been here. We haven't
13 made any efforts to limit the scope of indemnification.
14 Whatever they are they are and they'll be determined in the
15 ordinary -- in the course of the proceedings.

16 And prior to this -- the filing of this adversary
17 proceeding we've not been here to take any positions. If
18 they're talking about some position that was taken in the
19 settlement discussion that's not appropriate here anyway.

20 But as our objection makes clear, in the State
21 Court the issue of Lehman's entitlement to indemnification
22 has never been raised, will not be decided there, not at
23 all, not later in the case, not ever in the case. That's
24 just not there.

25 The third point Lehman makes is that they -- they

1 need to stay this action because Syncora and U.S. Bank
2 continue to impose the specter of direct impact on at least
3 600 million of reserves. That's reply brief paragraph 2.

4 As stated above -- earlier, Your Honor has ample
5 tools to deal with the reserves, either on a final basis, on
6 an estimation basis, on all sorts of bases you can deal with
7 the reserves. The State Court cannot. The State action
8 does not have any issue in it about the reserves in this
9 bankruptcy case. Only Your Honor can address those issues.

10 And whether Syncora has a right to rely on the
11 Lehman representations is also not present in the State
12 Court action. Syncora is not even a party there. They've
13 been dismissed as a party in that case. So that's not going
14 to be determined in the State Court case.

15 And then the last point that Lehman makes is
16 whether Lehman and creditors have and will continue to be
17 harmed by the manner in which the GreenPoint litigation
18 which accounting for certain appeals will continue
19 indefinitely. That's the point Your Honor raised earlier.
20 And that has given Syncora and U.S. Bank the strategic
21 opportunity to try and extract an unwarranted recovery from
22 Lehman. That's precisely what Your Honor can deal with with
23 the toolbox available to you. You don't need a stay of a
24 judge's decision that is fully briefed and argued. There's
25 nothing else going on in that case. That case is stayed

1 pending that decision.

2 If, after that decision, there's something going
3 on that's somehow actually does affect Lehman or its estate,
4 they can come back to Your Honor for the stay. But we don't
5 expect that to happen and there's certainly nothing in the
6 motion that's before the judge currently that has any impact
7 other than potential stare decisis persuasive impact on Your
8 Honor's decision that warrants a stay.

9 THE COURT: Okay. Thank you.

10 (Pause)

11 THE COURT: Good morning.

12 MR. VOGEL: Good morning. Excuse me. Good
13 morning, Your Honor. Michael Vogel for Syncora Guarantee.

14 I had prepared this morning to talk to you about
15 what I thought was a very clear, practical consideration
16 that staying a summary judgment proceeding that has been sub
17 judice since October was not a very practical way to lead to
18 a faster resolution of the issue. It seems to me that issue
19 is amply clear to Your Honor so I won't -- I won't belabor
20 that point, although I --

21 THE COURT: Well, I don't know. You can never
22 assume that my questions mean that I'm leaning to a
23 particular way.

24 MR. VOGEL: Well, I will tell you -- I will tell
25 you my views on that, but then I do want to --

1 THE COURT: Okay.

2 MR. VOGEL: -- address a few things that -- that
3 Lehman specifically raised.

4 So as I said, Your Honor --

5 THE COURT: I mean, my overarching point is that
6 as in any litigation time is somebody's friend and time is
7 somebody's enemy.

8 Here the plan administrator entirely appropriately
9 wants to do his job and administer the estate, wants to give
10 money to people who have been waiting for years and years to
11 get money. So anything that looms as a significant
12 impediment to doing that is of concern here.

13 So to the extent that there is -- there are
14 massive claims that are seen to be -- being the resolution
15 of which is being delayed by other stuff, you know, that's a
16 -- that's a legitimate concern. Reserves are meant to be
17 protective and conservative. But at a certain point when --
18 if and when it becomes clear that there are duplicative or
19 over-reserves, those ought to come down because we're not
20 talking about, you know, tens of thousands of dollars.
21 We're talking about hundreds of millions of dollars and
22 that's -- that's real money to real folks who are waiting to
23 be paid.

24 So the nexus between the two actions is important
25 and is of interest to me, and I think that it's not a

1 thousand percent clear that it ought not be stayed. It --
2 this is like a -- I hate to use the word Rubik's cube, but
3 there's a Rubik's cube aspect to it.

4 So, anyway, so say -- say what would you like.

5 MR. VOGEL: Okay. Okay. Fair enough, Your Honor.
6 And I would only say in response to those comments I think
7 one -- one point that appears to me clear here is that we're
8 all in agreement since the plan administrator seems to think
9 standing is delaying those legitimate goals, I think we're
10 therefore all in agreement that we would like standing to be
11 resolved quickly. I think all four of the attorneys here
12 will say that to Your Honor.

13 And our view is that we don't think that staying a
14 proceeding that's sub judice, was argued in September, you
15 know, we're -- I hate to tell you 12 briefs on that as well
16 as a letter brief, so 13 briefs, 275 exhibits, expert
17 affidavits, it's a big record that we -- we would be
18 providing Your Honor plus whatever Lehman would want to put
19 in. I don't know that staying that -- and then post-
20 argument, I would add we do have some direct evidence that
21 Justice Freedman was working on it because she came back
22 with specific questions and the parties submitted something
23 subsequent to argument jointly on that.

24 So I am concerned that stopping that when, as you
25 say, the decision could come down tomorrow, we don't think

1 is a practical way to lead to a quicker resolution.

2 Now Your Honor raised the issue of Your Honor also
3 addressing the standing issue. That's not something we
4 object to. We're in favor of a quick resolution of the
5 standing issue. We feel strongly that U.S. Bank has a
6 position that it's going to prevail on that and we're --

7 THE COURT: So --

8 MR. VOGEL: -- not objecting to that.

9 THE COURT: So tell me what's the alleged amount
10 of Syncora's claim against LBHI?

11 MR. VOGEL: Syncora's claim, I think the reserve
12 is about 600 million now and that is based on principally
13 Syncora's paid out costs under its insurance policy. There
14 are some other things. There are attorneys' fees, et
15 cetera. But that's -- that's the biggest piece of it.

16 There is going to be some --

17 THE COURT: Wait. So let me understand this. So
18 Syncora has already gone out of pocket 600 million?

19 MR. VOGEL: That -- that I believe is the
20 approximate amount of what its paid plus what it anticipates
21 paying based on the current -- based on the current --

22 THE COURT: Hold on. I'm -- I'm --

23 MR. VOGEL: May I finish?

24 THE COURT: There's about to be an objection.

25 MR. COSENZA: No, Your Honor. I just -- this is

1 -- it's -- I'm sorry to interrupt. But this is sort of one,
2 I think, a threshold issue that needs to be set forward by
3 Syncora. This amount keeps on, you know --

4 THE COURT: Well, that's why I'm asking --

5 MR. VOGEL: Well --

6 THE COURT: -- the question. So I --

7 MR. VOGEL: -- and -- and I --

8 THE COURT: -- I'm trying to -- this is not
9 evidence.

10 MR. VOGEL: No.

11 THE COURT: I am just trying to understand what's
12 going on.

13 MR. VOGEL: It -- it's --

14 THE COURT: So --

15 MR. VOGEL: -- not evidence and if I may add it's
16 based on not having reviewed these numbers in preparation
17 for this particular hearing. So --

18 THE COURT: Okay.

19 MR. VOGEL: -- I hope you'll understand if any of
20 this might need --

21 THE COURT: That's fine.

22 MR. VOGEL: -- to be --

23 THE COURT: That's fine. I --

24 MR. VOGEL: -- corrected.

25 THE COURT: -- would like to know what's going on.

1 So --

2 MR. VOGEL: But --

3 THE COURT: -- it seems to me one important thing
4 for me to understand is what your claim is.

5 MR. VOGEL: Absolutely. And all these numbers, I
6 hope you would understand we would --

7 THE COURT: Of course.

8 MR. VOGEL: -- give you precise numbers.

9 THE COURT: It's not evidence.

10 MR. VOGEL: Conceptually, though, it's insurance
11 payments. It's anticipated future insurance payments. It's
12 legal fees. Now there are -- I do need to disclose to Your
13 Honor conceptually there are post-closing of the
14 securitization transactions -- I assume that's why Lehman is
15 standing up -- that were a benefit to Syncora and that --
16 Lehman, I'm sure, is going to take the position mitigate
17 that damages number.

18 That's an issue that Your Honor is going to have
19 to resolve because that -- that will be --

20 THE COURT: Okay. But you --

21 MR. VOGEL: -- briefed.

22 THE COURT: But you don't have the ability to
23 differentiate between out of pocket already paid versus what
24 you anticipate?

25 MR. VOGEL: Not -- not standing here. My

1 recollection is more of it is already paid than to be paid
2 in the future by a substantial amount, but I --

3 THE COURT: And paid -- and paid to whom?

4 MR. VOGEL: Paid into the trust which then --

5 THE COURT: Okay.

6 MR. VOGEL: -- pays it under the --

7 THE COURT: Right.

8 MR. VOGEL: -- trust documents.

9 THE COURT: So -- so to the extent that you paid,
10 U.S. Bank doesn't get a double dip, right?

11 MR. VOGEL: Well, U.S. Bank is made whole by our
12 payments to U.S. Bank.

13 THE COURT: Yes.

14 MR. VOGEL: But --

15 THE COURT: So, therefore, to the extent that U.S.
16 Bank is made whole, they don't get to go to Lehman and say,
17 pay me again, right?

18 MR. VOGEL: U -- well, no, because U.S. Bank has
19 liabilities including to us. It's a little bit complicated
20 and I apologize that that -- that wasn't something that I
21 prepared to explain. It's something that I --

22 THE COURT: Okay.

23 MR. VOGEL: -- would request the opportunity to
24 explain how that all works.

25 THE COURT: Sure. I'm not -- this is all

1 background.

2 MR. VOGEL: But -- yeah. And, also -- but since
3 we're in that area of background, I do object to the idea
4 that Syncora's claim and the U.S. Bank's claim are identical
5 or close to identical.

6 Your Honor is correct. There cannot be double
7 payment and there will be circumstances in which a recovery
8 to U.S. Bank would reduce Syncora's claim, and there will be
9 circumstances in which a recovery to Syncora's claim will
10 reduce U.S. Bank's claim. But it's -- and it's not quite as
11 simple as just saying these are identical claims. And in
12 the Southern Circuit in the In re: Delta case explains that
13 the way you deal with that, when you have two related, but
14 different claims -- and these are very different claims.
15 One is for repurchase and --

16 THE COURT: Sure. I understand.

17 MR. VOGEL: -- one is for indemnification. When
18 you have those two different claims they proceed and then
19 you have to, you know, work it out so that you don't have
20 double recovery. And we're not seeking double recovery to
21 be clear.

22 But it's not very simple to just stand here today
23 and say --

24 THE COURT: Sure.

25 MR. VOGEL: -- here's what's black --

1 THE COURT: I understand. I understand.

2 MR. VOGEL: Okay. And even just to add a little
3 bit to that, it may depend literally on which loans are
4 found to be breaching, which reps and warranties vis-à-vis
5 my client are found to be breaching. It's not simply I can
6 say this is the theory. It kind of has to be litigated and
7 played out.

8 Staying for a moment with the -- I think I've
9 actually said what I've had to say about the practical
10 considerations of staying the State Court action. I think
11 the only other thing I wanted to identify from what Lehman
12 said is they spoke today at oral argument. They also spoke
13 in some depth about the "admission" of U.S. Bank at oral
14 argument.

15 THE COURT: Yeah. So let's talk about that.

16 MR. VOGEL: And let -- let me address it since I
17 was counsel to U.S. Bank in that action so I -- I'm actually
18 the person who supposedly made that admission.

19 THE COURT: Okay.

20 MR. VOGEL: And I would ask if Your Honor were to
21 read the transcript there I think I was actually very clear
22 as to what I was saying, which is that the principal part of
23 U.S. Bank's claim against GreenPoint, those reps and
24 warranties are indeed canceled as to Lehman because they are
25 overlapping.

1 So to that extent they are -- Lehman is correct as
2 it characterizes --

3 THE COURT: Talking about the -- right, as opposed
4 to the -- what I -- the gap reps.

5 MR. VOGEL: Yes. However, gap reps isn't the
6 totality of it. That's what's significant. Gap refers to
7 the period of time between when --

8 THE COURT: Yeah.

9 MR. VOGEL: -- the loans go from GreenPoint to
10 Lehman. However, there's another category of reps which are
11 specifically and expressly non-cancelable reps, and this is
12 in the transcript. You'll see this in the summary judgment
13 argument. Those non-cancelable reps, which are the
14 minority, but are still -- because we're talking about such
15 dollars still substantial --

16 THE COURT: Right.

17 MR. VOGEL: -- those are ones as to which both
18 Lehman and GreenPoint are liable. I think U.S. counsel may
19 address this as well. But that's the basic point.

20 And then I would simply add that --

21 THE COURT: So you're -- the state -- so what
22 you're saying is that your statement was limited to what I
23 think of as the wish go down to laying reps, just the reps
24 that were -- the reps that were repeated, but that -- but
25 that weren't taken on.

1 MR. VOGEL: Well, I --

2 THE COURT: Just --

3 MR. VOGEL: -- I would say that --

4 THE COURT: The first category of reps that you
5 described to me --

6 MR. VOGEL: I think in the --

7 THE COURT: -- right?

8 MR. VOGEL: -- statement I very clearly delineated
9 that there were some involved --

10 THE COURT: Okay.

11 MR. VOGEL: -- and I think I said, or least
12 intended to say and I would say to you the majority of them
13 are canceled and Lehman is correct. But a substantial
14 minority is in the --

15 MR. VOGEL: All right. So there's three buckets.
16 There's what you call the canceled reps. There's the gap
17 reps, and then there's the non-cancelable reps.

18 MR. VOGEL: Correct. And then --

19 THE COURT: Okay.

20 MR. VOGEL: And then just to tab -- tab another
21 bucket, and since we've been talking about it here today
22 it's not a surprise, an overarching rep is that the remedies
23 were transferred into the trust. Lehman -- Lehman said this
24 deal was going to work and GreenPoint now claims it didn't
25 work. And that obviously is something that it would have an

1 overarching securitization-wide liability to Syncora and
2 U.S. Bank for.

3 THE COURT: Okay.

4 MR. VOGEL: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 MS. BOLAND: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MS. BOLAND: Connie Boland on behalf of U.S. Bank
9 as indenture trustee. And I was remiss, Your Honor. I
10 neglected to mention that Frank Top from Chapman & Cutler is
11 also in the courtroom on behalf of U.S. Bank as indenture
12 trustee.

13 So the indenture trustee joins in the arguments
14 made by GreenPoint with respect to the lack of jurisdiction
15 of this Court and the commodity and federalism arguments,
16 and it joins in the arguments articulated by Syncora this
17 morning.

18 What I would like to emphasize to Your Honor --

19 THE COURT: I don't know if I agree that I lack
20 jurisdiction, but I'm not going to argue with you about it.

21 MS. BOLAND: I -- I didn't think that you would
22 agree with me on that point, Your Honor.

23 THE COURT: Whether or not I -- I should exercise
24 discretion to do something is different from whether or not
25 I have jurisdiction. So --

1 MS. BOLAND: And --

2 THE COURT: -- we can just -- but we can move that
3 past that.

4 MS. BOLAND: We can, Your Honor. And I think that
5 some of the reasons why Your Honor should not exercise your
6 discretion to stay the State Court action because of the
7 irreparable harm to the indenture trustee.

8 The indenture trustee should have the right to
9 pursue its prosecution of the State Court claim in the venue
10 of its choice as it sees fit. This is a state law issue
11 before a State Court. It's a breach of contract action, and
12 it's between two non-debtors. It has, you know, nothing to
13 do with -- and everything to do with the indenture trustee's
14 right to secure its bargained for remedy.

15 The harm that Lehman claims is speculative at
16 best. It says that without a stay it's not going to be able
17 to distribute assets. Well, with a stay, as Your Honor
18 noted earlier this morning, it's not necessarily going to
19 result in the more expeditious distribution --

20 THE COURT: Well --

21 MS. BOLAND: -- of assets.

22 MR. VOGEL: -- so let's talk about that. So I
23 asked counsel for Syncora how much their claim is. Let me
24 ask you, how much is your claim?

25 MS. BOLAND: Well, Your Honor, let's get back to

1 the issue of the canceled and non-canceled reps.

2 THE COURT: Sure.

3 MS. BOLAND: The non-canceled reps and the gap
4 reps need to be valued and Your Honor has jurisdiction over
5 it. I do not have the information to value that -- those
6 pieces of the -- of the reps.

7 THE COURT: Are you -- am I -- are -- is the state
8 reserving money for your claim in an amount that either
9 overlaps in whole or in part with amounts that you've
10 already received from Syncora?

11 MS. BOLAND: No, Your Honor. I don't believe that
12 it is.

13 THE COURT: An amount that's --

14 MS. BOLAND: I know that there is a reserve --

15 THE COURT: An amount that's duplicative of what
16 has been reserved for Syncora because surely -- surely a
17 double reserve is not something that is appropriate, right?

18 MS. BOLAND: A double reserve -- a double -- well,
19 a double award is not appropriate and I'm not advocating --

20 THE COURT: Why is a double reserve --

21 MS. BOLAND: -- here today --

22 THE COURT: -- appropriate?

23 MS. BOLAND: I'm not saying it is, Your Honor.

24 But I -- what I am saying is that at this juncture we just
25 have to take into consideration the distinctions between

1 Syncora's claim and the indenture trustee's claim. I mean,
2 the indenture trustee is here representing the noteholders
3 and the insurers, and that's an S plural. There is another
4 insurer, CIFG, that is represented only by the indenture
5 trustee through the trust. And there are noteholders that
6 are not represented by Syncora that are only represented by
7 the indenture trustee through the trust.

8 And so their right --

9 THE COURT: I --

10 MS. BOLAND: -- their rights are there.

11 THE COURT: I understand that it's complicated.

12 MS. BOLAND: Yeah. It is.

13 THE COURT: Okay. Everything in this room is
14 complicated.

15 MS. BOLAND: That's right, Your Honor.

16 THE COURT: Okay. If that were the test, I
17 wouldn't get out of bed in the morning. Okay. So it's
18 complicated. I get that. But that doesn't mean that the
19 plan administrator has to sit still for years and years and
20 years until it all gets sorted out.

21 So if you're going to tell me that I really
22 shouldn't mess with what's going on in the State Court while
23 this very complicated thing gets sorted out, you have to
24 also tell me what you're willing to do to advance the ball
25 here.

1 MS. BOLAND: Well, Your Honor, I mean, we -- our
2 proof of claim is before the Court and the proof of claim is
3 within your jurisdiction. And the reps -- our claim for
4 breach of reps and warranties is before the Court. We've
5 objected to, you know, estimating it or valuing it at this
6 point. But we can deal with it. I mean, it's pending here.

7 I am not -- I do not have information as to answer
8 your question directly as to what the value of the indenture
9 trustee's claims are for this particular trust. There are
10 numerous trusts as Your Honor know -- knows in which U.S.
11 Bank is the trustee. So I don't know whether all of those
12 details have been ferreted out yet in this very large
13 estate.

14 THE COURT: You know, I find that a little hard to
15 believe. You know, I just find it hard to believe that
16 given the stakes here and the complexity that there isn't --
17 that that isn't known. Whether you know it standing here
18 today, I'm not going -- this is not an ambush.

19 MS. BOLAND: Okay. Well --

20 THE COURT: That --

21 MS. BOLAND: -- I honestly don't, Your Honor. So
22 I'm --

23 THE COURT: That's fine.

24 MS. BOLAND: -- sorry I can't answer your
25 question.

1 THE COURT: That's fine. I don't like to ask
2 unfair questions. But I do believe that there's probably
3 substantial learning that could be accessed so that we could
4 better sort out the relationship and the amounts and deal
5 with that.

6 MS. BOLAND: Well, I mean, I -- other issues that
7 should be considered into the mix, Your Honor, is that I
8 just want to emphasize as we emphasize in the papers, that
9 Lehman did delay; that Lehman has known about this
10 GreenPoint State Court litigation for almost six years and
11 not once did they make any move to intervene or stay. And,
12 indeed, the indenture trustee was completely taken by
13 surprise when it was served with these papers.

14 And we believe that Your Honor should decline to
15 exercise your discretion because the case in the State Court
16 is sub judice.

17 If Your Honor has no other questions I'll rest on
18 the papers.

19 THE COURT: Thank you very much.

20 MR. COSENZA: May I just make a few points --

21 THE COURT: Of course.

22 MR. COSENZA: -- real quick?

23 Your Honor sort of highlighted one issue that's of
24 concern to the plan administrator. There is a \$600 million
25 reserve that's set up for the Syncora claim. But --

1 THE COURT: For only the Syncora claim?

2 MR. COSENZA: Yes. And then in addition --

3 THE COURT: Okay.

4 MR. COSENZA: -- Your Honor, there's the \$5
5 billion in reserve that's set up for all of the U.S. Bank
6 claims --

7 THE COURT: Right.

8 MR. COSENZA: -- as trustee.

9 THE COURT: Right.

10 MR. COSENZA: So, in essence, there are --

11 THE COURT: Right. So there's 5 billion --

12 MR. COSENZA: -- two --

13 THE COURT: -- for U.S. Bank across --

14 MR. COSENZA: Yes.

15 THE COURT: -- lots of securitizations.

16 MR. COSENZA: Including this --

17 THE COURT: Including this --

18 MR. COSENZA: -- this trust. So you do have a
19 double reserve issue that needs to be sorted out pretty
20 promptly from the plan administrator's perspective.

21 Your Honor, I also wanted to touch very quickly,
22 I'm not an expert on synthetic commutations and what was
23 done with Syncora. My colleague, Tom French, is an expert
24 --

25 THE COURT: Okay.

1 MR. COSENZA: -- on that area, so he may want to
2 come up here and correct me if I sort of take a misstep
3 here.

4 THE COURT: Okay.

5 MR. COSENZA: But we have heard that Syncora paid
6 X dollars into the trust and that the trust then pays that
7 out on a waterfall. We think through the mitigation efforts
8 referred to in the papers and discussed today that there's a
9 substantial amount that's round-tripped that, you know, goes
10 into the trust and then gets paid out to Syncora. So
11 there's some level of double recovery here. And we're just
12 having a tough time understanding --

13 THE COURT: Sure.

14 MR. COSENZA: -- what the exact number is that is
15 actually being --

16 THE COURT: Right. So that doesn't --

17 MR. COSENZA: -- incurred.

18 THE COURT: -- that -- that's something that --
19 and we're all kind of a little bit unprepared for this and
20 that's my fault because you couldn't have known I was going
21 to talk about this. But -- so that would be something that
22 we would want to get to the bottom of in connection with an
23 effort to reduce the double reserve.

24 MR. COSENZA: Correct.

25 I don't know, Tom, if you want to add anything

1 else?

2 If Tom could just talk for two minutes just to
3 make sure I didn't --

4 THE COURT: That's fine. Just give us your
5 appearance for the record, please.

6 MR. FRENCH: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. FRENCH: Tom French, Willkie, Farr & Gallagher
9 on behalf of the estate.

10 My colleague substantially correctly characterized
11 a synthetic commutation. The principle is that an insurer
12 such -- a commutation itself, not a synthetic one, is where
13 an insurer goes out and pays for effectively the cancelation
14 of a policy.

15 A synthetic commutation, in contrast, is a
16 transaction in which an insurer goes out and buys all or a
17 substantial portion of the underlying securities so that
18 when it makes payments on the policies, as Todd said, the
19 money effectively will roundtrip.

20 The estate believes that while the \$600 million
21 past and future claims number is a gross number and the
22 effect of the round-tripping process, we believe, is about a
23 fraction of that number. And from our standpoint that is
24 the starting point. We then look at the gap reps and the
25 other issues that have been raised today. That's, you know,

1 just the starting point from where you evaluate the claims
2 outstanding.

3 THE COURT: So the -- let me absorb what you're
4 saying for a minute.

5 So the use of this synthetic commutation device
6 Lehman says reduces its exposure to Syncora --

7 MR. FRENCH: Correct.

8 THE COURT: -- correct?

9 MR. FRENCH: It -- that's right.

10 THE COURT: That -- that Lehman gets to tap the
11 benefit of the use of that device because it's an out of
12 pocket damages calculation that we're looking --
13 determination that we're looking at.

14 MR. FRENCH: Yeah. I think our view is that
15 that's actually a high water mark. But then when you look
16 at the actual merits of the underlying claims and the gap
17 reps and everything else --

18 THE COURT: That -- right. I --

19 MR. FRENCH: But, yes. But --

20 THE COURT: That --

21 MR. FRENCH: -- that is correct.

22 THE COURT: Right.

23 MR. FRENCH: Yeah. That's correct.

24 THE COURT: Right. All right. Okay. Well, we've
25 gone a little bit far afield from whether or not a State

1 Court action should be stayed, but I think all of this is
2 very, very important.

3 So I think Mr. Cosenza wants to take --

4 MR. FRENCH: Thank you.

5 THE COURT: -- another shot.

6 MR. COSENZA: Your Honor, just a couple of other
7 wrap-up points --

8 THE COURT: Just let me say again, none of this is
9 evidence. This is beyond what you could have reasonably
10 anticipated we were going to talk about today. So I'm not
11 taking this as gospel. This is just the barest and
12 preliminary introductions to some of the complicated issues
13 that we're going to have to face.

14 So nobody should get nervous. Nobody's clients
15 should yell at them for not correcting what are later said
16 to be inaccurate statements.

17 MR. COSENZA: Sure.

18 THE COURT: Okay.

19 MR. COSENZA: Your Honor, just to comment that
20 you've made several times today which is very important to
21 the plan administrator, and that is that any decision in New
22 York Court is not binding on Lehman. We've heard
23 confirmation of that from GreenPoint.

24 I would also like to make sure that --

25 THE COURT: Well, it's not -- it's just -- it's

1 more than that. I want to put --

2 MR. COSENZA: Yeah.

3 THE COURT: -- a little bit more to the point. As
4 a matter of plain letter black law it's not binding. But,
5 also, I will say that to the extent that in subsequent
6 proceedings, for example, on reducing the reserves or
7 anything I'm really not going to be interested in hearing
8 about what happened in the State Court proceeding as
9 something that should put the thumb on the scale for
10 anybody's benefit. I mean, that's-- that's kind of the
11 quid pro quo part of -- not a quid pro quo, but part of what
12 I'm trying to communicate is I'm not going to be very open
13 to an argument that says, but in the State Court X, Y or Z,
14 whatever it is.

15 These claims are here. I'm going to decide them.
16 And the reserve is here established by an order of this
17 Court if it's going to be modified. I'm going to -- I'm
18 going to decide it based on predicate facts, not on
19 something that happened somewhere else.

20 Obviously, I do answer to, you know, the Second
21 Circuit --

22 MR. COSENZA: Yes.

23 THE COURT: -- and the Supreme Court to name a
24 few, but -- so I -- so, yes. I agree with your point.

25 MR. COSENZA: Just a couple of other -- just give

1 me two more minutes --

2 THE COURT: Sure.

3 MR. COSENZA: -- Your Honor, and I'll be done.

4 We heard several times from -- I think I counted
5 six different major questions that will not be addressed in
6 the New York Court proceedings that will -- that need to be
7 addressed in the Bankruptcy Court. We heard that from
8 GreenPoint's counsel.

9 I think that almost supports our point as the plan
10 administrator that this is the only forum that actually can
11 hear a lot of these complicated issues. The New York action
12 in some ways is subsumed within this much broader action
13 that's in the Bankruptcy Court.

14 So we think just from a judicial efficiency
15 perspective it makes a lot of sense to stay the New York
16 action and to go forward here.

17 THE COURT: Whose efficiency are you worried
18 about?

19 (Laughter)

20 THE COURT: I mean, I'm going to have to do it.

21 MR. COSENZA: Yes. You're going to have to do it.

22 THE COURT: I'm going to have to do it one way --

23 MR. COSENZA: Yes.

24 THE COURT: -- one way or the other. So --

25 MR. COSENZA: And, Your Honor, just to the point

1 that you raised earlier, we've raised in our complaint a
2 number of the tools that you've raised that you have at your
3 disposal.

4 First, we've asked Your Honor to disallow the
5 Syncora and U.S. Bank claims. We've asked you to estimate
6 the claims for reserve purposes. We've asked you to put the
7 claims for U.S. Bank through the RMBS protocol. We've asked
8 you to determine that the assignment here or the standing
9 issue that's been discussed is, you know, whatever the
10 proper, you know, --

11 THE COURT: Right.

12 MR. COSENZA: -- declaration is on that issue. So
13 we've asked for those, you know, various counts of our
14 complaint. We've asked Your Honor to assist us with that.
15 We really don't have an ax to grind here. We just need to
16 get this done as quickly as possible. And as I mentioned
17 before, there are various different permutations in how
18 different legal decisions or determinations will impact the
19 estate. And as the plan administrator we just need to get
20 this moving very quickly in that regard.

21 THE COURT: So does it makes sense for me to
22 direct essentially a meet and confer where the parties
23 attempt to agree to a scheduling --

24 MR. COSENZA: Yeah. And I think --

25 THE COURT: -- order with respect to all the

1 above?

2 MR. COSENZA: Correct.

3 THE COURT: And then to the extent that you
4 succeed or don't succeed, that I pen -- I take this under
5 advisement; that you folks have those conversations. You
6 come back. You let me know to what extent you have an
7 agreement. The plan administrator tells me to what extent
8 it wishes to continue to ask me to stay the State Court
9 litigation and we -- and we go from there.

10 MR. COSENZA: Yeah. And --

11 THE COURT: Does that make sense --

12 MR. COSENZA: Yes.

13 THE COURT: -- as a game plan?

14 MR. COSENZA: And let me just confer with my
15 client, but I do think there's two other -- two things --
16 two issues that I want to highlight which I've mentioned
17 several times. I think the reserve issue needs to be teed
18 up and that should be one of the threshold, you know, next
19 issues to be --

20 THE COURT: Right.

21 MR. COSENZA: -- teed up. And second is --

22 THE COURT: But, I mean, I have a --

23 MR. COSENZA: -- the assignment --

24 THE COURT: -- I have a good memory --

25 MR. COSENZA: Yeah.

1 THE COURT: -- right, so if the folks at this
2 table, when you try to tee something up, tell me ten reasons
3 why it can't go forward, you know, I will remember this day.
4 So, you know, things are going to have to move.

5 MR. COSENZA: If I can just caucus my client for
6 one --

7 THE COURT: Sure.

8 MR. COSENZA: -- minute and --

9 THE COURT: We can take a break if you would like.
10 Would you like to take a break or --

11 MR. COSENZA: Yeah. Sure. We'll take a five-
12 minute break --

13 THE COURT: Okay.

14 MR. COSENZA: -- Your Honor.

15 THE COURT: So we've been going for quite a while.
16 So why don't we come back at -- and maybe you folks could
17 talk to each other as well. Why don't we come back at ten
18 minutes after the hour --

19 MR. COSENZA: Great.

20 THE COURT: -- and we can finish up then?

21 MR. COSENZA: Thank you. Your Honor.

22 THE COURT: All right.

23 (Recess taken at 9:53 a.m.; resume at 10:14 a.m.)

24 THE COURT: Be seated.

25 Okay.

1 MR. COSENZA: Your Honor, may I approach?

2 THE COURT: Sure.

3 MR. COSENZA: So I think we have, from our
4 perspective, from the plan administrator's perspective the
5 two issues we want to tee up promptly.

6 THE COURT: Okay.

7 MR. COSENZA: One is the issue that's been briefed
8 before in New York Supreme Court on, you know, the
9 assignment and standing issue. From our perspective we
10 think that everything could be fully submitted to Your Honor
11 within -- probably by the middle of August.

12 THE COURT: Okay.

13 MR. COSENZA: We think that --

14 THE COURT: And that -- with the idea being that I
15 work for the rest of August on it?

16 MR. COSENZA: Well, whatever, you know, it's all
17 subject to Your Honor's schedule. But I think from our
18 perspective we would like to get an opportunity to look at
19 the underlying record. We think the record is complete.
20 I'm not sure if Lehman will put in an additional submission.

21 But I understand from Syncora and U.S. Bank's
22 counsel that some of the materials are redacted, so there
23 may be an issue we need to work out --

24 THE COURT: That have --

25 MR. COSENZA: -- and see if Your Honor is --

1 THE COURT: -- been filed in redacted form in the
2 State Court?

3 MR. COSENZA: Correct. Correct. So we'll need to
4 ask -- maybe submit an order to Your Honor so we can gain
5 access to that.

6 THE COURT: Okay. That sounds like an easy one.

7 MR. COSENZA: But beyond that I think everything
8 is fully submitted there and I think, you know, maybe even
9 ready for Your Honor even before that we get the materials
10 quickly.

11 THE COURT: Okay.

12 MR. COSENZA: The second --

13 THE COURT: Does this reflect your folks' view or
14 have you spoken to --

15 MR. COSENZA: I have spoken --

16 THE COURT: -- these folks as well?

17 MR. COSENZA: I mean, U.S. Bank and Syncora's
18 counsel can correct me. I think they're on board with this.
19 GreenPoint said they needed to check with their client. So
20 that -- we can hear from them if --

21 THE COURT: Okay.

22 MR. COSENZA: -- they have a different view.

23 THE COURT: All right.

24 MR. COSENZA: And Syncora and U.S. Bank can
25 correct me if I've misstated anything.

1 THE COURT: Okay.

2 MR. COSENZA: The second issue is the reserve
3 issue. We're going to make a motion to lower the Syncora
4 reserve. We think, as we told you before, it's inflated by
5 several hundred million dollars. And we're going to need
6 some accounting from Syncora, so we're going to try to move
7 that --

8 THE COURT: So there's going to be some --

9 MR. COSENZA: -- forward.

10 THE COURT: -- discovery so to speak that will be
11 --

12 MR. COSENZA: Yeah. And I think we need some form
13 of an accounting of some sort to figure out what exactly the
14 losses are, what --

15 THE COURT: Along the lines of --

16 MR. COSENZA: -- they're out of pocket --

17 THE COURT: -- the questions that I was asking
18 earlier.

19 MR. COSENZA: Correct. And we need that for both
20 us and maybe for the Court as well to understand what the
21 claim is worth. So we'll move that forward as quickly as we
22 can --

23 THE COURT: Okay.

24 MR. COSENZA: -- and hopefully have that fully
25 briefed maybe by the end of August. We'll --

1 THE COURT: Okay.

2 MR. COSENZA: -- try to work out a briefing
3 schedule and start also communicating with Syncora's counsel
4 to see if we can get some of this information and do what we
5 can to try to resolve these even consensually.

6 THE COURT: Okay. And in the meantime I will
7 carry the motion.

8 MR. COSENZA: Correct.

9 THE COURT: Okay. And are you going to reduce
10 this to some sort of a writing or shall I so order the
11 record? What did you have in mind?

12 MR. COSENZA: I think from our perspective so
13 ordering the record and then we'll confer with counsel on
14 the briefing schedule for the two separate issues. I think
15 I just would treat them as two separate sort of briefing
16 schedules.

17 THE COURT: Okay. I think that -- I don't know
18 that there's anything really in the record that I can so
19 order. I think that what you ought to do is allow folks to
20 make sure that their clients are signed off and that you
21 have all the details straight, and then I'm indifferent as
22 to whether or not it's a stipulation or you sent me a joint
23 letter telling me --

24 MR. COSENZA: Okay.

25 THE COURT: -- what the schedule is. Whatever is

1 most efficient for you, just as long as it's clear so --

2 MR. COSENZA: Yes.

3 THE COURT: -- so that there's clarity.

4 MR. COSENZA: No. That makes sense from our
5 perspective and I think we've laid sort of the general
6 framework of what we think.

7 THE COURT: Sure. Okay.

8 MR. COSENZA: So thank you, Your Honor.

9 THE COURT: All right. Okay.

10 MR. BURKE: Your Honor, Kevin Burke for GreenPoint
11 again.

12 We -- we don't agree with the idea of just marking
13 this and carrying this motion forward. The State Court
14 judge has been advised by the parties of the existence of
15 this motion --

16 THE COURT: Okay. Well, I am taking the motion
17 under advisement. So you can advise the State Court judge
18 that I have the motion under advisement.

19 MR. BURKE: Okay.

20 THE COURT: It doesn't affect -- I'm not entering
21 a stay. I'm offering no view whatsoever. Nothing that I've
22 said or done here today or am going to do going forward is
23 or should be seen as an impediment in any way to anything
24 that folks are pursuing in the State Court. So it's the --
25 it's -- I think people get used to my delivering decisions

1 from the bench, but sometimes when matters are larger and
2 more complicated I take them under advisement, and that's
3 essentially what I'm doing today.

4 MR. BURKE: Thank you, Your Honor.

5 THE COURT: All right. Yes.

6 MR. VOGEL: Very briefly, Your Honor.

7 THE COURT: Sure.

8 MR. VOGEL: Syncora is in agreement as I
9 understand U.S. Bank is with what Lehman's counsel said
10 regarding the prompt submission of the standing issue to
11 Your Honor subject to resolving the issues concerning
12 confidentiality. And I only wanted to say with respect to
13 the reserve which we understand they're going to be bringing
14 a motion on, that we hadn't talked to them about a time
15 frame. And that would be something --

16 THE COURT: Sure.

17 MR. VOGEL: -- to discuss.

18 THE COURT: We're not going to -- you know, moving
19 expeditiously is not equal to cutting corners or cutting off
20 people's rights to due process and adequate time to respond
21 and all of that. So that's why I said rather than so
22 ordering anything, you're going to work out a schedule. It
23 is the summertime and people have vacations and commitments
24 and, you know, those shouldn't be run rough shot over for
25 the sake of meeting, you know, a particular deadline.

1 MR. VOGEL: Very good, Your Honor. That was the
2 point I wanted to make.

3 THE COURT: Okay.

4 MR. VOGEL: Thank you.

5 THE COURT: All right. Okay. Hold on one
6 second.

7 (Pause)

8 MR. BURKE: I do have one housekeeping matter
9 after we get --

10 THE COURT: Sure.

11 MR. BURKE: -- to this.

12 (Pause)

13 MR. COSENZA: Your Honor, one last item. I
14 touched this before, but maybe we can ask for -- make a more
15 formal request.

16 The material in the State Court proceeding, we
17 understand from my co-counsel, is redacted and we want to
18 figure out some way of making sure we gain access to --

19 THE COURT: Right.

20 MR. COSENZA: -- the materials and --

21 THE COURT: I mean, you've already raised that so
22 I think you're going to work that out. I don't think that
23 anybody's going to take the position that you have to flag
24 line with respect to what's in the documents; that they will
25 -- there's going to have to be appropriate agreements,

1 sealing orders, et cetera. I mean, my concept is not
2 exactly that you're going to take lock, stock and barrel of
3 the entire State Court record and just kind of deliver it to
4 my front door. I mean, maybe you'll do that. But certainly
5 look at it with fresh eyes I would say.

6 MR. COSENZA: Okay.

7 THE COURT: I mean --

8 MR. COSENZA: Thank --

9 THE COURT: -- if it ends up being that, then it
10 is --

11 MR. COSENZA: Sure.

12 THE COURT: -- what it is.

13 MR. COSENZA: Okay. Thank you, Your Honor.

14 THE COURT: Is there something I'm missing?

15 MR. COSENZA: Yeah. We may need a court order at
16 some point.

17 THE COURT: Of course. Yeah. Someone -- and I
18 can't remember who -- someone already said that.

19 MR. COSENZA: I --

20 THE COURT: So you'll have to make a sealing
21 motion --

22 MR. COSENZA: Yes.

23 THE COURT: -- that complies with all the usual
24 rules and to the --

25 MR. COSENZA: Absolutely.

1 THE COURT: -- extent that everybody's in
2 agreement on that, that makes it that much easier. But,
3 yes. I --

4 MR. COSENZA: Okay.

5 THE COURT: I agree with you.

6 Just based on the timing that folks are talking
7 about today, it doesn't seem likely that you're going to ask
8 for a hearing date at the end of August. I'm generally not
9 inclined to give out hearing dates at the end of August. So
10 then we'll be into September and --

11 MR. COSENZA: Absolutely.

12 THE COURT: -- you know, it's always -- and then
13 we get into various religious holidays and whatnot.

14 MR. COSENZA: Uh-huh.

15 THE COURT: But we'll move it forward.

16 MR. COSENZA: We will coordinate with you and --

17 THE COURT: But no one should anticipate that
18 you're going to have hearing dates at the end of August.

19 MR. COSENZA: Okay.

20 THE COURT: Okay. Any last licks? Anyone else?

21 MR. COSENZA: That's all. Thank you, Your Honor.

22 MR. BURKE: Unrelated, but a housekeeping matter.

23 THE COURT: Okay.

24 MR. BURKE: Actually, two housekeeping matters.

25 One is that the defendants in this -- in the

1 adversary have not yet seen the full complaint because there
2 were redactions in it and I believe an order has been
3 submitted to Your Honor --

4 THE COURT: Right.

5 MR. BURKE: -- on the sealing --

6 THE COURT: So we had a sealing -- we had a
7 sealing motion with respect to the complaint that was on
8 today. We will enter that. I need to take another look at
9 it. And now that we're -- just give me a moment to think
10 out loud.

11 Now that we are embarked on this additional path,
12 perhaps you folks can take a look at that sealing order and
13 maybe we could have -- kill two birds with one stone and
14 bake into that sealing order -- it may not work. That may
15 be more cumbersome than it's worth. But, sure, you get to
16 see everything, and just let us know when you take another
17 look at the sealing order whether you want to amend it or --
18 to complete this new additional path or whether we should do
19 those things separately.

20 I can see you trying to think -- trying to keep up
21 with me here, Mr. Cosenza. You don't know what the answer
22 is. I don't know what the right answer is either. It may
23 be simplest just for me to enter the sealing order so that
24 that enables these folks to -- for you to file the redacted
25 version and that they then get a copy of the unredacted.

1 MR. COSENZA: Your Honor, we'll take a quick look
2 at this and see if there's some way of combining it and it
3 may be --

4 THE COURT: Okay.

5 MR. COSENZA: -- for efficiency purposes --

6 THE COURT: I'm not trying to make it more
7 complicated, just less. But they need to be able to see
8 what they need to see. Okay.

9 MR. BURKE: Second housekeeping matter, Your
10 Honor, there's a initial pretrial conference scheduled in
11 this adversary for the 22nd at 10 a.m. I personally have to
12 be before Judge Glenn at that exact time on that exact day
13 and I would like to, if it's possible, to move that.

14 THE COURT: So are we going to continue to do that
15 in light of what we've talked about here today?

16 MR. COSENZA: Your Honor, I think it would depend
17 on how things play out over the next week or so with --

18 THE COURT: Okay. Well, certainly we shouldn't --
19 we shouldn't force counsel to have to tell Judge Glenn that
20 he can't be there because --

21 (Laughter)

22 THE COURT: -- Judge Glenn will be unhappy with
23 me.

24 MR. COSENZA: Our hopes are that that conference
25 may not be necessary, but --

1 THE COURT: Right.

2 MR. COSENZA: -- it really depends on how things
3 play out in terms of reaching the scheduling on --

4 THE COURT: Okay.

5 MR. COSENZA: -- the two issues we phrased.

6 THE COURT: So how should we -- but how should we
7 leave that?

8 MR. COSENZA: We can just -- is there a different
9 day in July that -- late July that works for Your Honor?

10 (Pause)

11 THE COURT: Yeah. That day is a whole Lehman day,
12 so I -- depending on how long you're going to be before
13 Judge Glenn.

14 MR. BURKE: I would hope to be done by noon.

15 THE COURT: Okay. Then we could just -- we could
16 just push it back to noon to the extent that the parties
17 believe that it's still something that we should do because
18 that is a Lehman omni day. All right.

19 MR. COSENZA: That makes sense.

20 THE COURT: Okay. All right. Thank you very
21 much.

22 MR. COSENZA: Thank you.

23 THE COURT: We'll be back at 11:00 for the
24 remainder of the Lehman calendar.

25 (Recess taken at 10:25 a.m.; resume at 11:03 a.m.)

1 THE COURT: Good morning. How are you?

2 MR. WOOLVERTON: Good morning, Your Honor. I'm
3 well. Thank you.

4 For the record Alexander Woolverton with Weil,
5 Gotshal & Manges on behalf of the plan administrator.

6 Your Honor, this is a continuation of this
7 morning's calendar in Lehman Brothers Holdings, Inc., and as
8 the agenda reflects there are two items remaining for this
9 morning.

10 THE COURT: Okay.

11 MR. WOOLVERTON: The second item on the agenda,
12 Your Honor, is the motion pursuant to Rule 9019 of the
13 Federal Rules of Bankruptcy Procedure and Section 105(a) of
14 the Bankruptcy Code seeking approval of the settlement
15 agreement related to the Airlie LCDO (Aviv LCDO 2006-3)
16 credit default swap agreement and indenture. That appears
17 at Docket Entry 49703.

18 The Court has been provided a copy of the
19 confidential settlement agreement and the plan administrator
20 has filed the declaration of Lawrence Brandman (ph) in
21 support of the proposed settlement agreement, and that can
22 be found at Docket Entry 49996. Due to a scheduling
23 conflict, Your Honor, Mr. Brandman could not be present in
24 court today.

25 Finally, Your Honor, U.S. Bank as trustee has

1 filed a declaration on June 15, 2015 in connection with the
2 proposed settlement agreement and that can be found at
3 Docket Entry 49989. And counsel for U.S. Bank is present in
4 court today.

5 THE COURT: Okay.

6 MR. WOOLVERTON: The motion was filed on May 20th,
7 year 2015, and the objection deadline was established as
8 June 11th, 2015. That deadline has, of course, passed and
9 there have been no objections filed.

10 As stated in the motion the proposed settlement
11 agreement provides for the resolution of yet another SPV
12 flip clause dispute. Beginning in 2010 the parties were
13 engaged in an ADR process and this process ultimately
14 resulted in the execution of a termination agreement in
15 respect of the transaction at issue.

16 As a result the collateral was liquidated and U.S.
17 Bank, as trustee, holds approximately \$841,000 for the
18 benefit of the holders of the so-called remaining notes.

19 This proposed settlement agreement, Your Honor,
20 provides for full resolution of the dispute as to the
21 balance of those funds. Additionally, the proposed
22 settlement agreement provides for the dismissal of Airlie as
23 well as the co-issuer under the notes and U.S. Bank, both
24 individually and as trustee from the adversary proceeding
25 Number 10-03542 commenced in connection with this

1 transaction.

2 Your Honor, the relief sought by the parties is
3 unopposed. Additionally, as supported by the declaration of
4 Mr. Brandman, the plan administrator submits the -- that the
5 proposed settlement agreement is in the best interest of
6 LBHI and LBSF's estates and their creditors.

7 Accordingly, unless the Court has any questions,
8 the plan administrator respectfully request that the motion
9 be granted and the settlement agreement be approved.

10 THE COURT: All right. Thank you very much.

11 Does anyone wish to be heard?

12 MR. TOP: Your Honor, Frank Top --

13 THE COURT: Yes.

14 MR. TOP: -- from Chapman & Cutler on behalf of
15 U.S. Bank.

16 THE COURT: How are you?

17 MR. TOP: I'm doing very well.

18 We received no objections from any noteholders in
19 connection --

20 THE COURT: Okay.

21 MR. TOP: -- with this matter, and you'll be very
22 happy to know that the number of transactions in which U.S.
23 Bank is involved in in the non-distributed fund adversary is
24 dwindling.

25 (Laughter)

1 THE COURT: Good news -- good news for all
2 concerned.

3 MR. TOP: That is true. Thank you --

4 THE COURT: Very good.

5 MR. TOP: -- Your Honor.

6 THE COURT: Thank you.

7 All right. With that I'm happy to approve the
8 settlement. It clearly is in the best interest of the
9 estate and complies with the relevant standards under Rule
10 9019 of the Bankruptcy Rules, and we will entertain an order
11 and enter it later today.

12 All right. Next.

13 MR. FAIL: Thank you, Your Honor. Good morning.
14 For the record, Garrett Fail, Weil, Gotshal & Manges for the
15 plan administrator.

16 The next item on the agenda is a motion for
17 extension of the period to file objections to and request to
18 estimate claims.

19 The Court entered an order yesterday granting the
20 motion as to all of the more than 2,300 disputed claims for
21 which no objection was filed. The plan administrator
22 requests that the Court grant the motion with respect to the
23 claim of Highlands CDO Opportunity Master Fund, L.P. today.

24 Causes exists to extend the objection deadline.
25 As described at the status conference earlier this month,

1 tremendous progress has been made in the claims process and
2 significant work remains to be done. Court approved
3 procedures granting discretion to the plan administrator
4 have fostered this success and efficiency of the progress to
5 date.

6 Earlier this month the plan administrator filed a
7 motion to estimate Highland's claim and 1,147 others at zero
8 for reserve and distribution purposes. If Highland objects
9 to that motion, entry of a final order determining that
10 motion with respect to Highland's claim in particular may
11 not be -- may not occur prior to the expiration of the
12 current objection deadline.

13 It's premature today to predict whether any
14 further action with respect to Highland's claim will be
15 required, but there is no basis to distinguish the objection
16 period for Highland's claim from the period for other
17 claims. Limiting the objection period for any claim would
18 only force the plan administrator to choose between
19 incurring unnecessary expenses and allowing meritless or
20 inflated claims.

21 The plan administrator requests that the Court
22 overrule Highland's objection and grant the motion. Ms.
23 Volkov is present on behalf of Highlands and I'll yield the
24 podium to her --

25 THE COURT: Okay.

1 MR. FAIL: -- unless Your Honor has any questions.

2 THE COURT: All right. That's fine. Thank you.

3 MR. FAIL: Thank you.

4 MS. VOLKOV: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MS. VOLKOV: Ilana Volkov, Cole Schotz on behalf
7 of Highland CDO Opportunity Master Fund. It's a pleasure to
8 appear for the first time before Your Honor.

9 THE COURT: Welcome.

10 MS. VOLKOV: Thank you.

11 So, Your Honor, several facts are undisputed.

12 THE COURT: Well, wait. Let's start --

13 MS. VOLKOV: Sure.

14 THE COURT: -- let's start very specifically
15 because a number of things happened, I believe, after you
16 filed your opposition. And one of the main themes of your
17 opposition this time around and indeed before was lack of
18 transparency, lack of movement, and the like.

19 So now you know. So the plan administrator wasn't
20 delaying for the cause of delay. There was a logic to the
21 path that they were pursuing. So now you have the benefit
22 of that and I -- I cannot understand what it is that you
23 think ought to happen next.

24 MS. VOLKOV: Sure.

25 THE COURT: And it is worth pointing out. Your

1 client -- you're the only objector. Everybody else gets it
2 and is satisfied that the plan administrator, in good faith,
3 is proceeding in a logical and indeed expeditious fashion.

4 So I -- I just -- I don't understand why now with
5 the plan administrator having filed the motion to estimate
6 the claims, why there remains anything to talk about.

7 MS. VOLKOV: Well, actually Your Honor raises a
8 very good point because we actually believe that the motion
9 is now moot. Now that the plan administrator has declared a
10 process, the process being a claims estimation process, and
11 that motion was filed within the deadline that Judge Peck
12 set, we actually believe that the motion is moot.

13 THE COURT: Well, but we're not -- we're not
14 wholly connecting them because, first of all, if you want to
15 consent to the estimation at zero, I'm sure the plan
16 administrator will be delighted and we could call it a day.
17 But I don't think that's what you're here to tell me.

18 MS. VOLKOV: No.

19 THE COURT: Okay. So to the extent that you're
20 not going to agree to that or that there's not a disposition
21 consistent with what the plan administrator's requesting,
22 then the plan administrator has and is seeking, I believe,
23 to retain its rights to object to the claim on other
24 grounds.

25 MS. VOLKOV: Correct. And that's --

1 THE COURT: And then simply order in logically the
2 order in which it pursues those. So it doesn't make sense
3 now for the plan administrator to hypothetically, if you
4 will, object to the Highland claim on those other grounds
5 because depending upon what happens in the estimation, we
6 may never get to it.

7 So I -- I just -- I'm at a loss to understand what
8 you're telling me.

9 MS. VOLKOV: Okay.

10 THE COURT: I mean, it can't be -- I'm not going
11 to deprive the plan administrator of a potential further
12 substantive ground to object to the claim if that's the
13 direction that it goes. I have no idea. I obviously
14 haven't looked at the estimation motion yet. But I'm
15 generally familiar and the general concept is that the
16 claimants are going to get the -- the guarantee claimants
17 are going to get paid in whole by the primary obligor,
18 Libby, and, therefore, there's nothing left to be paid.

19 But -- and I'm totally aware of all the law that
20 says that you have a full claim until it's paid in full. I
21 get all that. But I don't see the point of forcing the plan
22 administrator before the disposition of that action to file
23 what would be a completely hypothetical objection to
24 Highland's claim.

25 MS. VOLKOV: Well, Your Honor, as I said, we think

1 that the motion is moot. Certainly, at least with respect
2 to the relief that seeks to extend the deadline to estimate
3 claims. The plan administrator has filed the motion to
4 estimate claims. So that part of the relief is now moot.

5 To the extent that the administrator still wants
6 to object to the claim, if the estimation motion is denied,
7 which we believe is frankly, Your Honor, highly prejudicial
8 to our client --

9 THE COURT: What's prejudicial?

10 MS. VOLKOV: -- the way -- well, the way that the
11 administrator has the timeline, the administrator has
12 embarked upon as well as the fact that --

13 THE COURT: I don't --

14 MS. VOLKOV: -- we could be --

15 THE COURT: I don't understand that.

16 MS. VOLKOV: Well, I'm trying to explain it.

17 THE COURT: Okay.

18 MS. VOLKOV: As well as the fact that Highlands
19 could be litigating with the plan administrator for years
20 and years and years to come.

21 So the plan --

22 THE COURT: Wait. Wait. Wait. Stop. Stop.
23 Stop. I -- it sounds terrible, but it's not true. There's
24 going to be a disposition of the estimation motion, I don't
25 know what the time frame is --

1 MS. VOLKOV: It's in three weeks.

2 THE COURT: Okay.

3 MS. VOLKOV: Right.

4 THE COURT: Right.

5 MS. VOLKOV: Right. So --

6 THE COURT: So -- yes?

7 MS. VOLKOV: Okay. So --

8 THE COURT: Well --

9 MS. VOLKOV: -- if the -- if the estimation --

10 THE COURT: -- I --

11 MS. VOLKOV: -- motion is granted, Your Honor,
12 let's play this out.

13 THE COURT: But I -- it might be being heard in
14 three weeks, but that doesn't mean I'm going to decide it in
15 three weeks.

16 MS. VOLKOV: Understood. But why -- why is the
17 relief -- why is the relief that the plan administrator
18 seeks to extend the deadline for entry of a final order
19 granting the estimation motion? That's where I'm a little
20 bit lost with respect to the relief that the plan
21 administrator seeks because the way that the motion is
22 presented and was presented 18 months ago was an extension
23 of the deadline to file an estimation request. It was not
24 an extension of the deadline to seek entry of a final and
25 non-appealable order either granting an estimation motion or

1 allowing or disallowing a claim.

2 So I think there's perhaps a bit of a disconnect
3 here and that's why I say, Your Honor, I think with respect
4 to the -- at least with respect to the portion that seeks to
5 extend the plan administrator's deadline to file an
6 estimation motion, that motion is moot because that's
7 exactly what the plan administrator has done.

8 THE COURT: Yeah. Well, I'll let Mr. Fail respond
9 to that. I don't know that I agree, but he can put his
10 words around --

11 MS. VOLKOV: Okay.

12 THE COURT: -- why I think -- I don't think that
13 is even accurate. I fundamentally do not understand what
14 this fight is about.

15 MS. VOLKOV: Well, the fight is about the fact
16 that --

17 THE COURT: You want -- do you want to litigate --
18 you want to litigate on the merits of your claim --

19 MS. VOLKOV: That's exactly what we've been asking
20 for.

21 THE COURT: -- when I might estimate it at zero?

22 MS. VOLKOV: Well, Your Honor, we -- that motion
23 is moot as to the estimation relief. Okay. That's the
24 first thing.

25 The second thing, Your Honor --

1 THE COURT: They might --

2 MS. VOLKOV: Okay. But can I just -- can I just
3 finish? The other thing that I would like to see happen is
4 -- and this is actually a request that I had made to Mr.
5 Fail on several occasions after the estimation motion was
6 filed -- is the estimation motion is going to be heard in
7 three weeks. I have no idea and Your Honor has no idea
8 what's going to happen in three weeks. We have no idea who
9 else is going to object besides my client.

10 But it seems prudent to me to adjourn the motion
11 today and it's only obviously as to the Highland claim until
12 July, I think it's 22nd, which is the return date of the
13 estimation motion so that we have a much better picture as
14 to exactly what Your Honor is going to rule. Your Honor may
15 deny the motion.

16 THE COURT: I'm not going -- I'm not going to do
17 that. I -- we're going to have the estimation motion. I'm
18 going to do whatever it is I do either across the board or
19 individually or in some way to categorize the claims. I
20 have no idea because I haven't looked at it yet. If you
21 were here for my 10:00 calendar you heard my message loud
22 and clear that I'm going to move things along.

23 It makes no sense to proceed to litigate on the
24 merits of what I would call second level or second tier
25 potential objections to Highland's claim when it might may

1 be resolved fully by the disposition of the estimation
2 motion which will proceed expeditiously. There's no mystery
3 around it and it doesn't cause anybody to have to waste
4 resources litigating or even writing an objection on a piece
5 of paper.

6 I suppose the plan administrator could satisfy
7 your request by writing -- by putting the word objection on
8 a piece of paper and writing the words that to the extent
9 that the motion to estimate the Highland claim at zero is
10 denied, the plan administrator objects to the claim on
11 additional grounds. That's -- what's the point of that?

12 MS. VOLKOV: Well, but, Your Honor, the plan
13 administrator is not willing to do that. The plan
14 administrator is not willing to do that so, perhaps, perhaps
15 and, you know, I haven't had a discussion with Mr. Fail
16 about it, but perhaps I can get a better understanding as to
17 exactly what they're seeking on July 22nd by way --

18 THE COURT: They're seeking to estimate the claim
19 --

20 MS. VOLKOV: I know. But --

21 THE COURT: -- at zero.

22 MS. VOLKOV: But by way of due process. Are we
23 having a substantive hearing on the merits of all these
24 claims on July 22nd or are we going to be embarking on
25 perhaps discovery and an actual hearing as to the estimation

1 of the claim? Maybe we will seek relief to say that the
2 claim should be estimated at \$5 million, which is exactly
3 what the claim is valued today. In other words, that's the
4 claim amount today was originally \$10 million. It's now
5 been reduced to \$5 million.

6 So perhaps we can get a better understanding as to
7 whether this is essentially a summary judgment motion on
8 July 22nd --

9 THE COURT: This is not a hearing on the motion to
10 estimate. This is a hearing on one objection to a logical
11 and reasonable request by the plan administrator to continue
12 to proceed logically and expeditiously to deal with claims
13 in a manner that makes sense rather than object on grounds
14 that may not be relevant because the claim may be disposed
15 upon -- disposed of on other grounds. It doesn't make sense
16 for anybody, including Highland, to force a litigation that
17 may not have to occur.

18 The premise of the estimation motion is that the
19 claims are being satisfied by other parties. So to the
20 extent that you want to have a conversation with Mr. Fail,
21 he will be most happy, I'm sure, to discuss that with you.
22 Nothing's going to happen by ambush on the 22nd.

23 But the whole tone and theme of all your
24 objections thus far have been lack of transparency, Judge
25 Peck insisted on transparency, we have to know what's

1 happening. Now you know what's happening. There's a motion
2 to estimate it at zero on the grounds that are set forth in
3 the motion. There's going to be a hearing. I actually
4 don't know what the contours of that hearing look like. Mr.
5 Fail will tell you. If you have a problem with that, you
6 can contact me. I will move it along.

7 But I'm not going to insist that the plan
8 administrator file a claims objection that at this juncture
9 is unnecessary either to advance the ball or to inform your
10 client and proceed down a litigation path that may be wholly
11 unnecessary.

12 If the estimation motion doesn't succeed with
13 respect to -- with respect to your client, I'll hold their
14 feet to the fire to file an objection expeditiously on
15 whatever grounds that may remain.

16 MS. VOLKOV: Okay. I appreciate that, Your Honor,
17 and I still would, you know, respectfully request the Court
18 to rule that the -- at least the request to estimate the
19 claim or to extend --

20 THE COURT: Well --

21 MS. VOLKOV: -- has been rendered moot.

22 THE COURT: -- I'll let Mr. Fail respond to that.
23 I think I know what his answer is going to be, but --

24 MS. VOLKOV: Thank you.

25 THE COURT: -- but let me hear what he has to say.

1 MR. FAIL: Thank you, Your Honor, and I won't take
2 much time to --

3 THE COURT: Okay. So --

4 MR. FAIL: -- to go over points --

5 THE COURT: -- with respect to the point about the
6 extension of the time to make a motion to estimate, what's
7 the response?

8 MR. FAIL: It's not moot at all, Your Honor. As
9 Your Honor identified, there are many claims that are
10 subject to the motion. There are no objections on file yet.
11 We don't know what the contours of any hearing will be.

12 THE COURT: But counsel's point is that you wanted
13 an extension of time to make a motion to estimate. You've
14 now made a motion to estimate, so why do you need an
15 extension of time?

16 MR. FAIL: The same reason that we -- that we
17 sought the extension the last time from -- for claims that
18 were pending an objection. In the event that a summary
19 objection is not granted at a sufficiency hearing, at a
20 sufficiency level hearing, the plan administrator has not
21 yet or may not have yet analyzed each of the claims.

22 For example, in this one case in particular it's
23 based on -- I think a master repurchase agreement with
24 Libby. The plan administrator -- there is no specific
25 guarantee so for the plan administrator to value a

1 transaction which it doesn't believe is a guarantee, that's
2 a threshold issue that we would -- we would have a
3 sufficiency hearing on, whether or not they asserted a claim
4 that's even a valid claim before we value repurchase
5 agreements.

6 We would also --

7 THE COURT: And that --

8 MR. FAIL: -- and under the --

9 THE COURT: And that in and of itself would be --

10 MR. FAIL: That's --

11 THE COURT: -- an estimation hearing or --

12 MR. FAIL: Well, no, Your Honor.

13 THE COURT: -- a sufficiency hearing.

14 MR. FAIL: That could be a sufficiency hearing.

15 Also, the estimation motion points out in order
16 for a party to receive a distribution, you know, it cannot
17 have received from Libby. Ms. Volkov hasn't stated how much
18 of the \$5 million Highland has already received from Libby.

19 You know, there's also other issues, it's a
20 Bermudian company: Does it have assets; is it one of the
21 Highland funds that was in -- that became insolvent in '08,
22 '09; can it repay enough. There's a lot that can have to
23 follow from an estimation hearing before we move onto an
24 objection and spend resources and divert the court's time.

25 And the only last thing that I would add is, Your

1 Honor, in terms of, you know, Highland or any other party
2 moving to, you know, bring their claim forward, the claims
3 process was designed to give the plan administrator the
4 discretion in order to allow the plan administrator to
5 schedule a sufficiency hearing before discovery is taken, in
6 order for the plan administrator to put a matter into an ADR
7 process before burdening the Court, and allowing any one
8 creditor to jump the line to -- with respect to its claim
9 because it believes it's more important than any of the
10 billions of others, you know, we think would be the wrong
11 message to send to creditors. And it would be --

12 THE COURT: Well, to the extent that -- and I'm
13 not going to turn this into a hearing on the motion to
14 estimate. But to respond to counsel's concern about having
15 a full and better understanding of what you anticipate or
16 expect or tee up on the hearing, you should have a
17 conversation with counsel.

18 MR. FAIL: Absolutely.

19 THE COURT: And -- but it's a two-way conversation
20 because to the extent that the plan administrator is seeking
21 to understand the amount that has already been paid by Libby
22 on the -- with respect to the claim, that informs the
23 process going forward --

24 MR. FAIL: Certainly.

25 THE COURT: -- and could substantially narrow the

1 field.

2 So it is -- it is a two-way street. And I think
3 you both ought to talk to each other and see if there's a
4 more cooperative way to move this forward.

5 MR. FAIL: Absolutely, Your Honor.

6 THE COURT: All right. All right. Anything
7 further from Highland?

8 MS. VOLKOV: I mean, I -- Your Honor, I'm sorry.
9 I didn't really hear a response, but I'm not going to
10 belabor the point. Your Honor will do --

11 THE COURT: What do you mean you didn't hear a
12 response?

13 MS. VOLKOV: I didn't hear a direct response to
14 the question of why they need additional time to seek to
15 estimate Highland's claim.

16 THE COURT: Because there --

17 MS. VOLKOV: So --

18 THE COURT: Because there may be further
19 proceedings that are required.

20 MS. VOLKOV: Right. But the further proceedings
21 are all going to be encompassed either under 502(c) or to
22 the extent Your Honor denies that motion, they are going to
23 be filing, again, a sufficiency or an objection, whatever
24 you want to call it. But it's either, in my mind, an
25 estimation or it's a claim objection.

1 So, again, I don't want to belabor the record,
2 Your Honor, but I'm still sort of at a loss as to why --

3 THE COURT: You want to try it one more time, Mr.
4 Fail.

5 MS. VOLKOV: That part of the relief --

6 MR. FAIL: The plan administrator -- what -- I
7 think what Highland wants us to say in a couple of different
8 ways is that we've analyzed -- and which I'm not willing to
9 do -- is that we've analyzed the claim fully; that we know
10 the valuations; that we're prepared to lodge every either
11 objection or motion to estimate. And the plan administrator
12 isn't prepared to do that because it doesn't want to spend
13 the resources to, you know, swat a fly 20 times if the first
14 time killed it.

15 THE COURT: So let me restate that. So there
16 might be an additional motion to estimate --

17 MR. FAIL: There may very well be additional
18 motions to estimate.

19 THE COURT: That's his point. Okay. That's the
20 point. That's what my surmise was before Mr. Fail spoke the
21 first time. That's what I understood him to be saying. But
22 the fundamental point that I'm going to come back to, and I
23 think we've already belabored this enough, is that this is
24 not a case of the plan administrator keeping a party in the
25 dark and refusing to budge.

1 I understand that we are as many years out as we
2 are. But it -- there's a logic to the manner in which it's
3 moving forward. It is moving forward. And we've now opened
4 a dialogue and there's going to have to be a dialogue with
5 respect to anybody who is interested in dialoging that will
6 move things forward.

7 So the objection is overruled with respect to
8 Highland and the extension of time will be granted across
9 the board.

10 MS. VOLKOV: Thank you.

11 THE COURT: All right.

12 MR. FAIL: Thank you, Your Honor.

13 THE COURT: Thank you very much.

14 Is there anything else, Mr. Fail?

15 MR. FAIL: Your Honor, there is one more item that
16 is not -- was not on the agenda.

17 On behalf of the Chapter 11 estates and its
18 professionals, I would like to take a moment to acknowledge
19 and thank Ms. Stacy Lutkiss (ph) for her years of service as
20 a judicial clerk to the court.

21 To add some historical context, Ms. Lutkiss's
22 first day on the -- with the Court was in April of 2009 on a
23 day when Weil and other professionals were first filing
24 their first interim fee applications in these cases. The
25 docket was 3,342, more than 46,800 docket entries ago.

1 It was before the bar date and the subsequent
2 filing of 69,000 claims. Ms. Lutkiss was there through the
3 filing in 2010 of a subcon (sic) plan and the filings of a
4 non-con plan and the historic confirmation of Lehman's
5 compromised plan in 2011.

6 Ms. Lutkiss served the Court through hearings to
7 consider complex adversary proceedings, contested matters,
8 sales, settlements, protocols and orders in aid of execution
9 of the confirmed plan.

10 As importantly, Your Honor, for years Ms. Lutkiss
11 was the everyday resource for both the estate's
12 professionals and all parties in interest in these cases,
13 ensuring that all parties' voices were heard and all matters
14 received the attention they were due.

15 Her dedication and availability were undeterred by
16 weather, natural disaster, personal illness or personal
17 travel. Her dedication to the Court in these cases in
18 particular cannot be understated and was not unnoticed.
19 All creditors in these cases have benefited from her
20 service.

21 As a small token of tremendous appreciation, and
22 with the understanding that a clean break from Lehman can be
23 difficult, with the Court's permission I would like to
24 present Ms. Lutkiss with some abandoned property.

25 THE COURT: I assume that any such items and the

1 giving of them to Ms. Lutkiss are consistent with applicable
2 ethical guidelines --

3 MR. FAIL: They are.

4 THE COURT: -- that are --

5 MR. FAIL: They are non-failable and there's no
6 market value for these goods.

7 The first item is a vintage 2008 edition Lehman
8 Brothers hat. We have some Lehman luggage tags for your
9 travel, and a Lehman mouse pad for her success in future
10 desktop endeavors. And with your permission, Your Honor,
11 I'll present it to Ms. Lutkiss.

12 THE COURT: Yes. You may approach, Mr. Fail.

13 (Pause)

14 MR. FAIL: Thank you, Your Honor. That's all .

15 THE COURT: Thank you.

16 MR. FAIL: That's all that we have.

17 THE COURT: Does anyone else wish to be heard?

18 MR. PECK: Oh, excuse me, Your Honor. Excuse me.

19 And I apologize for interrupting.

20 THE COURT: Sir --

21 MR. PECK: My name is --

22 THE COURT: -- can I help you?

23 MR. PECK: My name is -- yeah. My name is James

24 M. Peck.

25 THE COURT: Yes.

1 MR. PECK: I am admitted to practice in the
2 Southern District of New York. I'm requesting this
3 opportunity to be heard now.

4 THE COURT: But aren't you located --

5 MR. PECK: I'm just --

6 THE COURT: -- in --

7 MR. PECK: I'm just a --

8 THE COURT: Aren't you located in Manhattan, Mr.
9 Peck?

10 THE COURT: I'm sorry. I'm just a short subway
11 ride away. But for cause shown I request -- I would humbly
12 request your indulgence and waiver of chambers rule to
13 appear by telephone so I can say a few words of warm
14 appreciation regarding Stacy Lutkiss. Would that be okay?

15 THE COURT: Just this once. Yes, you may proceed,
16 Mr. Peck.

17 MR. PECK: Thank you. Thank you, Your Honor.

18 May it please the Court? I am the former United
19 States Bankruptcy Court Judge who presided in this Court
20 over the Lehman bankruptcy cases from September 15, 2008
21 until my retirement in January of 2014.

22 I was truly fortunate that Stacy Lutkiss was my
23 law clerk for the last five years of my judicial tenure.
24 She was and remains an enormously valuable asset to the
25 Court and helped me to research and write some of the most

1 important decisions that were issued in the Lehman cases.

2 She served me and the parties who appeared before
3 me in cases large and small very well. And she provided
4 wise counsel and thoughtful, always dependable assistance to
5 me in managing the largest and most complex insolvency cases
6 in history.

7 She is a person of uncommonly good humor and sound
8 judgment, and she is a trusted colleague. I wish her great
9 success and personal satisfaction as she leaves the familiar
10 surroundings of One Bowling Green for the green, not
11 necessarily greener, academic quadrangles of upstate New
12 York.

13 Stacy, many thanks for your outstanding service
14 and best of luck to you.

15 THE COURT: Thank you, Mr. Peck.

16 MR. PECK: Thank you, Your Honor.

17 THE COURT: Thank you. Have a good day.

18 I think we're adjourned.

19 MR. FAIL: Thank you, Your Honor.

20 THE COURT: Thank you very much.

21 (Whereupon, these proceedings concluded at 11:32 a.m.)
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25

I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
Doc #2 Motion of Lehman Brothers Holdings Inc. and Structured Asset Securities Corporation for an Order to Enforce the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors and Stay a Related Third-Party Action	--	--
Doc #3 Lehman's Motion for Entry of an Order (A) Authorizing the Filing of Certain Information Under Seal in Connection with Lehman's Adversary Proceeding Against U.S. Bank N.A., Syncora Guarantee, Inc., and GreenPoint Mortgage Funding, Inc., and Lehman's Motion for Stay of the GreenPoint Litigation, and (B) Granting Related Relief	--	--
Doc #49703 Motion for Approval of Settlement Agreement Relating to Airlie LCDO I (Aviv LCDO 2006-3) Credit Default Swap Agreement and Indenture	68	7

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I N D E X

RULINGS

DESCRIPTION	PAGE	LINE
Doc #49709 Motion of Lehman Brothers Holdings Inc. for Extension of the Period to File Objections to and Requests to Estimate Claims	85	7

C E R T I F I C A T I O N

I, Sherri L. Breach, certify that the foregoing transcript
is a true and accurate record of the proceedings.

Sherri L
Breach

Digitally signed by Sherri L Breach
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SHERRI L. BREACH

AAERT Certified Electronic Reporter & Transcriber CERT*D-397

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